

1 KEVIN ALEXANDER (SBN 175204)  
2 BENJAMIN T. MORTON (SBN 199158)  
3 CRAIG J. MARIAM (SBN 225280)  
4 GORDON & REES LLP  
5 101 W. Broadway, Suite 2000  
6 San Diego, CA 92101  
7 Telephone: (619) 696-6700  
8 Facsimile: (619) 696-7124

6 MANUEL SALDANA (SBN 137060)  
7 GORDON & REES LLP  
8 633 W. 5<sup>th</sup> Street, Ste. 4900  
9 Los Angeles, CA 90071  
10 Telephone: (213) 576-5000  
11 Facsimile: (213) 680-4470

12 Attorneys for Defendant  
13 BIC USA, INC.

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 DONNA R. NELSON, an individual and  
14 on behalf of the general public,

15 Plaintiff,

16 vs.

17 BIC USA, INC., a Delaware corporation,  
18 and DOES 1 through 100, inclusive,

19 Defendants.

CASE NO.: 3:07-cv-2367

ANSWER TO COMPLAINT

20  
21 COMES NOW defendant BIC USA, INC. ("Defendant") and for its Answer  
22 to Plaintiff DONNA R. NELSON's ("Plaintiff") Complaint, states as follows:

23 **ANSWER TO COMPLAINT**

24 1. Defendant admits that Plaintiff purports to bring this action on behalf  
25 of "all purchasers of disposable lighter products manufactured, distributed,  
26 marketed, and/or sold by BIC USA, INC." Defendant denies that it has engaged in  
27 a fraudulent, unlawful, deceptive and unfair course of conduct. Defendant is  
28 without knowledge or information sufficient to form a belief as to the remaining

1 allegations contained in paragraph one of the Complaint, and therefore denies  
2 same.

3 2. Defendant admits that the United States District Court has jurisdiction  
4 over this matter.

5 3. Defendant admits that venue in the United States District Court for the  
6 Southern District of California is proper.

7 4. Defendant is without knowledge or information sufficient to form a  
8 belief as to the allegations in paragraph four of the Complaint, and therefore denies  
9 same.

10 5. Defendant admits the allegations contained in paragraph five of the  
11 Complaint.

12 6. Defendant admits that it has an interest in the website located at  
13 <http://www.bicworld.com>. Based on Plaintiff's characterization of the remaining  
14 allegations in paragraph six of the Complaint, Defendant is without knowledge or  
15 information sufficient to form a belief as to those allegations, and therefore denies  
16 same.

17 7. Defendant is without knowledge or information sufficient to form a  
18 belief as to the allegations in paragraph seven of the Complaint, and therefore  
19 denies same.

20 8. Defendant is without knowledge or information sufficient to form a  
21 belief as to the allegations in paragraph eight of the Complaint, and therefore  
22 denies same.

23 9. Defendant incorporates herein its responses to paragraphs 1 through 8,  
24 inclusive, as though fully set forth herein.

25 10. Defendant admits that it markets some disposable lighters that have  
26 printed on the product and its packaging the "Made in USA" designation.

27 Defendant is without knowledge or information sufficient to form a belief as to the  
28

1 remaining allegations in paragraph ten of the Complaint, and therefore denies  
2 same.

3 11. Defendant denies that it falsely signifies that its products are "Made in  
4 USA." Given Plaintiff's characterizations of the remaining allegations contained  
5 in paragraph eleven of the Complaint, Defendant is without knowledge or  
6 information sufficient to form a belief as to those allegations, and therefore denies  
7 same.

8 12. Defendant admits that there are "true facts to the contrary" as to  
9 Plaintiff's allegations contained in paragraph twelve of the Complaint. Defendant  
10 is without knowledge or information sufficient to form a belief as to the remaining  
11 allegations in paragraph twelve of the Complaint, and therefore denies same.

12 13. Defendant denies that it fraudulently concealed or failed to disclose to  
13 the general public the true facts regarding the country of origin designation of its  
14 lighters. Given Plaintiff's characterizations as to the remaining allegations in  
15 paragraph thirteen of the Complaint, Defendants in unable to and without sufficient  
16 information to form a belief as to those allegations, and therefore denies same.

17 14. Defendant denies the allegations in paragraph fourteen of the  
18 Complaint.

19 15. Defendant denies the allegations in paragraph fifteen of the  
20 Complaint.

21 16. Defendant denies the allegations in paragraph sixteen of the  
22 Complaint.

23 17. Defendant denies that its disposable lighters unlawfully contain  
24 component parts made outside of the United States and that it was not entitled to  
25 lawfully make the "Made in USA" representation. Defendant is without  
26 knowledge or information sufficient to form a belief as to the remaining allegations  
27 in paragraph seventeen of the Complaint, and therefore denies same.

28

1           18. Defendant is without knowledge or information sufficient to form a  
2 belief as to the allegations in paragraph eighteen of the Complaint, and therefore  
3 denies same.

4           19. Defendant denies the allegations in paragraph nineteen of the  
5 Complaint.

6           20. Defendant is without knowledge or information sufficient to form a  
7 belief as to the allegations in paragraph twenty of the Complaint, and therefore  
8 denies same.

9           21. Defendant is without knowledge or information sufficient to form a  
10 belief as to the allegations in paragraph twenty-one of the Complaint, and therefore  
11 denies same.

12           22. Defendant is without knowledge or information sufficient to form a  
13 belief as to the allegations in paragraph twenty-two of the Complaint, and therefore  
14 denies same.

15           23. Defendant is without knowledge or information sufficient to form a  
16 belief as to the allegations in paragraph twenty-three, and all of its sub-parts, of the  
17 Complaint, and therefore denies same.

18           24. Defendant denies the allegations contained in paragraph twenty-four,  
19 and all of its sub-parts, of the Complaint.

20           25. Defendant is without knowledge or information sufficient to form a  
21 belief as to the allegations in paragraph twenty-five of the Complaint, and therefore  
22 denies same.

23           26. Given the vague and ambiguous nature of the allegations contained in  
24 paragraph twenty-six of the Complaint, Defendant is without knowledge or  
25 information sufficient to form a belief as to those allegations, and therefore denies  
26 same.

27           27. Defendant incorporates herein its responses to paragraphs 1 through  
28 26, inclusive, as though fully set forth herein.

1           28. Defendant admits the existence of California Civil Code sections 1750  
2 *et seq.* Defendant is without knowledge or information sufficient to form a belief  
3 as to the remaining allegations in paragraph twenty-eight of the Complaint, and  
4 therefore denies same.

5           29. Defendant is without knowledge or information sufficient to form a  
6 belief as to the allegations insofar as the term “products” is used in paragraph  
7 twenty-nine of the Complaint, and therefore denies same.

8           30. Defendant is without knowledge or information sufficient to form a  
9 belief as to the allegations in paragraph thirty of the Complaint, and therefore  
10 denies same.

11           31. Defendant is without knowledge or information sufficient to form a  
12 belief as to the allegations in paragraph thirty-one of the Complaint, and therefore  
13 denies same.

14           32. Defendant admits the existence of California Civil Code section  
15 1770(a). Defendant is without knowledge or information sufficient to form a belief  
16 as to the characterization of the allegations in paragraph thirty-two of the  
17 Complaint, and therefore denies same.

18           33. Defendant denies the allegations in paragraph thirty-three of the  
19 Complaint.

20           34. Defendant denies the allegations in paragraph thirty-four of the  
21 Complaint.

22           35. Defendant is without knowledge or information sufficient to form a  
23 belief as to the allegations in paragraph thirty-five of the Complaint, and therefore  
24 denies same.

25           36. Defendant denies the allegations in paragraph thirty-six of the  
26 Complaint.

27           37. Defendant incorporates herein its responses to paragraphs 1 through  
28 36, inclusive, as though fully set forth herein.

1           38. Defendant admits the existence of California Business & Professions  
2 Code sections 17200 *et seq.* Defendant is without knowledge or information  
3 sufficient to form a belief as to the characterization of the allegations in paragraph  
4 thirty-eight of the Complaint, and therefore denies same.

5           39. Defendant denies the allegations in paragraph thirty-nine, and all of its  
6 sub-parts, of the Complaint.

7           40. Defendant denies the allegations in paragraph forty, and all of its sub-  
8 parts, of the Complaint.

9           41. Defendant denies the allegations in paragraph forty-one of the  
10 Complaint.

11           42. Defendant denies the allegations contained in paragraph forty-two of  
12 the Complaint.

13           43. Defendant denies the allegations contained in paragraph forty-three of  
14 the Complaint.

15           44. Defendant denies the allegations contained in paragraph forty-four of  
16 the Complaint.

17           45. Defendant denies those allegations contained in paragraph forty-five  
18 of the Complaint.

19           46. Defendant denies those allegations contained in paragraph forty-six of  
20 the Complaint.

21           47. Defendant denies those allegations contained in paragraph forty-seven  
22 of the Complaint.

23           48. Defendant denies that Plaintiff is entitled to recover its attorneys' fees.  
24 Defendant denies the remaining allegations contained in paragraph forty-eight of  
25 the Complaint.

26           49. Defendant incorporates herein its responses to paragraphs 1 through  
27 48, inclusive, as though fully set forth herein.  
28

1           50. Defendant admits the existence of California Business & Professions  
2 Code section 17533.7. Defendant is without knowledge or information to form a  
3 belief as to the characterization of the remaining allegations contained in paragraph  
4 fifty of the Complaint, and therefore denies same.

5           51. Defendant denies the allegations contained in paragraph fifty-one of  
6 the Complaint.

7           52. Defendant denies the allegations contained in paragraph fifty-two of  
8 the Complaint.

9           53. Defendant denies the allegations contained in paragraph fifty-three of  
10 the Complaint.

11           54. Defendant denies the allegations contained in paragraph fifty-four of  
12 the Complaint.

13           55. Defendant denies that Plaintiff is entitled to recover its attorneys' fees.  
14 Defendant denies the remaining allegations contained in paragraph fifty-five of the  
15 Complaint.

16                                   **AFFIRMATIVE DEFENSES**

17                                   **First Affirmative Defense**

18           The Complaint fails to state a claim, in whole or in part, upon which relief  
19 can be granted.

20                                   **Second Affirmative Defense**

21           Defendant affirmatively avers that the issues of liability and damages should  
22 be bifurcated and, therefore, requests same.

23                                   **Third Affirmative Defense**

24           Plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

25                                   **Fourth Affirmative Defense**

26           Plaintiff's claims are barred by the doctrine of laches.

27                                   **Fifth Affirmative Defense**

28           Plaintiff's claims are barred under the doctrine of unclean hands.



1 Sixth Affirmative Defense

2 Plaintiff's claims are barred because there exists a superseding or  
3 intervening cause of her injuries.

4 Seventh Affirmative Defense

5 Plaintiff's state law claims are barred due to federal preemption.

6 Eighth Affirmative Defense

7 Plaintiff assumed the risk of her alleged injuries.

8 Ninth Affirmative Defense

9 Plaintiff's claims are barred by the applicable statutes of limitations  
10 including, but not limited to, California Code of Civil Procedure sections 338,  
11 339(1), 340(3), 340.4, and 340.5.

12 Tenth Affirmative Defense

13 Plaintiff's claims are barred by the doctrine of primary jurisdiction.

14 Eleventh Affirmative Defense

15 Plaintiff has no standing to bring this action.

16 Twelfth Affirmative Defense

17 Plaintiff failed to join all necessary and indispensable parties.

18 Thirteenth Affirmative Defense

19 Plaintiff's Complaint may be barred by any or all of the affirmative defenses  
20 contemplated by Rule 8 of the Federal Rules of Civil Procedure. The extent to  
21 which Plaintiff's claims may be barred by one or more of said affirmative defenses  
22 not specifically set out above cannot be determined until Defendant has the  
23 opportunity to conduct adequate discovery. Therefore, Defendant reserves the right  
24 to assert any additional defenses based upon evidence obtained during the course  
25 of discovery.

26 **JURY DEMAND**

27 Defendant herein demands a trial by jury as to all issues contained in  
28 Plaintiff's Complaint.



1 WHEREFORE, having answered Plaintiff's Complaint, Defendant requests  
2 the following relief:

- 3 1. That Plaintiff's claims be dismissed;  
4 2. That Plaintiff recover nothing from Defendant;  
5 3. For the costs of this action, including such attorneys' fees as are  
6 permitted by law; and  
7 4. For such other and further relief as this Court deems just and proper.

8  
9  
10 Dated: December 26, 2007

GORDON & REES LLP

11  
12 By: 

13 Craig J. Mariam  
14 Benjamin T. Morton  
15 Kevin W. Alexander  
16 Manuel S. Saldana  
17 Attorneys for Defendant BIC USA,  
18 INC.  
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 101 W. Broadway, Suite 2000, San Diego, CA 92101. On December 26, 2007, I served the within document:

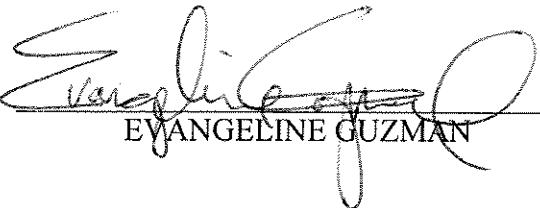
**1. ANSWER TO COMPLAINT**

- ☐ **BY FACSIMILE, [Fed. Rule Civ. Proc. Rule 5(b)]** by sending a true copy from Gordon & Rees LLP's facsimile transmission telephone number (619) 696-7124 to the fax number(s) set forth below, or as stated on the attached service list. I am readily familiar with the firm's practice for sending facsimile transmissions, and know that in the ordinary course of Gordon & Rees LLP's business practice the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed at Gordon & Rees LLP for transmission.
- ☒ **BY U.S. MAIL [Fed. Rule Civ. Proc. Rule 5(b)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- ☒ **BY ELECTRONIC FILING.** I caused all of the pages of the above-entitled document(s) to be electronically filed and served on designated recipients through the Electronic Case Filing system for the above-entitled case. The file transmission was reported as successful and a copy of the Electronic Case Filing Receipt will be maintained with the original document(s) in our office.

**John H Donboli**  
 Del Mar Law Group, LLP  
 322 Eighth Street  
 Suite 101  
 Del Mar, CA 92014  
 Email: [jdonboli@delmarlawgroup.com](mailto:jdonboli@delmarlawgroup.com)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 26, 2007, at San Diego, California.

  
 EVANGELINE GUZMAN